

Message Text

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21

ACTION EB-07

INFO OCT-01 AF-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOTE-00 INR-07 NSAE-00 FAA-00 SS-15 NSC-05 L-02 SSO-00

NSCE-00 INRE-00 /045 W

----- 054452

O R 240955Z MAY 75

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC NIACT IMMEDIATE 3024

AMEMBASSY DAR ES SALAAM NIACT IMMEDIATE

AMEMBASSY KINSHASA NIACT IMMEDIATE

INFO AMEMBASSY ACCRA

LIMITED OFFICIAL USE NAIROBI 4251

E.O. 11652: N/A

TAGS: EAIR, BEXP, KE

SUBJECT: PANAM FLIGHT FROM NAIROBI TO KINSHASA SCHEDULED

MAY 25 CANCELLED BY EAST AFRICAN COMMUNITY

REF: STATE 118444 (NOTAL); STATE 121454 (NOTAL)

1. SUMMARY: IN ACCORDANCE WITH INSTRUCTIONS CONTAINED
REFTELS, EMBASSY ATTEMPTED THROUGH GOOD OFFICES TO PREVENT
WHAT APPEARED TO BE INTENTION OF EAST AFRICAN COMMUNITY
(EAC) TO FORBID PAN AM FLIGHT 189 TO KINSHASA FROM MAKING
SCHEDULED RUN MAY 25. PAN AM INITIATED FLIGHT UPON
PUBLICATION OF ITS MAY SCHEDULE. ALTHOUGH INITIAL INTERP-
RETATION OF EAC ORDER WAS THAT PAN AM COULD NOT BOARD
PASSENGERS, EAC OFFICIALS IN NAIROBI HAVE INFORMED PAN
AM THAT IT WILL ALSO BE PREVENTED FROM FILING ANY FLIGHT
PLAN FOR KINSHASA. END SUMMARY.

2. ACCORDING COMMUNITY OFFICIALS, REASON FOR COMMUNITY ORDER
DELIVERED ORALLY TO PAN AM MANAGER JAMES MICHAELSEN BY COMMUNITY
CIVIL AEJONAUTICS BOARD OFFICER UTANGE, WAS THAT PAN AM NEVER
SOUGHT TO ENTER INTO AIRLINE TO AIRLINE DISCUSSIONS OVER WHAT
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PAN AM KNEW WERE SERIOUS OBJECTIONS OF EAST AFRICAN COMMUNITY AND
EAST AFRICAN AIRWAYS (EAA) TO COMPETITION WHICH PAN AM'S FLIGHT
OFFERED EAA'S FLIGHT EARLIER SAME DAY TO KINSHASA. EAA FLIGHT
LEAVES NAIROBI FOUR HOURS EARLIER AND ARRIVES IN KINSHASA

BEFORE PAN AM TAKES OFF, BUT EAA BELIEVES THAT MOST PASSENGERS
WOULD ELECT TO FLY PAN
AM IN PREFERENCE TO SMALLER, REGIONALLY
BASED AIRLINE.

3. MICHAELSEN'S INTERPRETATION OF BILATERAL AIR TRANSPORT AGREEMENT INITIALLED AD REFERENDUM BY USG AND KENYA JUNE 18, 1969, IS THAT HE WAS REQUIRED MERELY TO FILE SCHEDULE CHANGE (ADDITION OF FLIGHT) ON ADVICE BASIS WITHOUT NEED FOR APPROVAL BY COMMUNITY OR EAA. HE STATES THIS IS COMMON AIRLINE PRACTICE THROUGHOUT WORLD. MICHAELSEN BELIEVES THAT IF EAA HAD OBJECTION, IT SHOULD HAVE REQUESTED DISCUSSIONS AND CONTENDS THAT NEITHER THE COMMUNITY NOR EAA SOUGHT DISCUSSIONS SPECIFICALLY WITH PAN AM, THOUGH IN LETTER DATED APRIL 11 COMMUNITY STATED TO PAN AM THAT IT OBJECTED TO PROPOSED FLIGHT AND SUGGESTED PAN AM'S NEW FLIGHT SCHEDULE SHOULD BE SUBJECT OF OVERALL CONSULTATIONS BETWEEN COMMUNITY AND USG. IN HS REPLY, MICHAELSEN RECOMMENDED THAT COMMUNITY RAISE MATTER OF GENERAL DISCUSSIONS WITH USG, WHICH IT HAS NOT DONE. MICHAELSEN, HOWEVER, STILL HOLDS POSITION WITH COMMUNITY THAT HE NEEDED NO PRIOR APPROVAL OF COMMUNITY OR EAA TO INSTITUTE HIS KINSHASA FLIGHT.

4. IN ALL COMMUNICATIONS, EAA HAS RECOGNIZED THAT INITIALLED BILATERAL IS OPERABLE. POSITION OF COMMUNITY AND EAA IS THAT IT MAY WELL BE TRUE THAT MICHAELSEN HAS RIGHT UNDER INITIALLED BILATERAL TO FILE SCHEDULE CHANGE ON ADVICE BASIS WITHOUT SEEKING APPROVAL. THEY ARE INCENSED, HOWEVER, THAT IN ACTUAL FACT HE WOULD OMIT PRIOR DISCUSSIONS. THEY SEE THE PAN AM FLIGHT AS DIRECTLY COMPETITIVE WITH THAT OF MUCH SMALLER REGIONAL AIRLINE IN DEVELOPING COUNTRY WHICH IS ORIGIN OF BOTH FLIGHTS. DIRECTOR GENERAL OF EAA TOLD EMBOFF THAT QUOTE MINIMUM OF COURTESY UNQUOTE ON PAN AM'S PART COULD HAVE PREVENTED THIS PROBLEM. COMMUNITY'S STAND IS THAT NO MATTER WHAT INITIALLED BILATERAL MAY SEEM TO SAY, NEW SCHEDULES, ESPECIALLY NEW FLIGHTS, ARE SUBJECT TO COMMUNITY'S APPROVAL. COMMUNITY DID NOT RPT NOT APPROVE PAN AM'S SCHEDULE CHANGE, FACT WHICH MICHAELSEN ADMITS.

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5. EMBASSY'S CONCLUSION IS THAT WHILE PAN AM MAY HAVE A CASE BASED ON STRICT CONSTRUCTION OF AN INITIALLED BILATERAL, PAN AM WAS NEEDLESSLY PROVOCATIVE IN UNILATERALLY INSTITUTING COMPETITIVE FLIGHT WITHOUT PRIOR DISCUSSIONS (EVEN THOUGH CAB APPROVAL MIGHT BE NEEDED FOR SUCH DISCUSSIONS).

6. MICHAELSEN HAS EXPRESSED SATISFACTION WITH WHAT HE CONSIDERED ENERGETIC IF UNSUCCESSFUL EMBASSY INTERVENTION. OFFICIALS WITH WHOM EMBOFFS SPOKE IN ATTEMPT TO HAVE COMMUNITY STAY ITS ORDER WERE: CAPT. ROBERT RIVENBARK, TECHNICAL ADVISER & OPERATIONS DIRECTOR, EAA; A.M. SHITAKHA, COMMUNICATIONS AND RESEARCH SECRETARIAT, EAC; COL. G. W. TOKO,

DIRECTOR GENERAL, EAA; AND EDWIN MTEI, SECRETARY GENERAL, EAST AFRICAN COMMUNITY.

7. ACTION PROPOSED: INFORM EMBASSY WHETHER LEGAL COUNSEL CONSIDERS PAN AM'S INTERPRETATION OF ITS RIGHTS UNDER INITIALIZED BILATERAL IS CORRECT. IF SO, WE OULD RECOMMEND STRONG WRITTEN PROTEST TO EAC. IT NOW SEEMS UNLIKELY THAT ANY STAY OR ORDER CAN BE ACHIEVED. EMBOFF HAS JUST SPOKEN AGAIN WITH EDWIN MTEI, WHO SAID HE WILL NOT INTERFERE WITH ORDER SHICH HE FEELS WAS TAKEN RIGHTLY IN VIEW PAN AM'S INTRANSIGENCE. IF PAN AM INTERPRETATION IS NOT

CORRECT, WE WOULD RECOMMEND THAT PAN AM INDICATE WILLINGNESS TO ENTER DISCUSSIONS WITH EAA PREPARATORY TO MODIFYING SCHEDULE TO KINSHASA ON MUTUALLY ACCEPTABLE BASIS.

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